



As set forth more fully in the Insurers' Memorandum of Law attached hereto, on February 10, 2015 -- *two months after the close of discovery and for the first time in this litigation* -- Receiver Melanie Damian submitted the Affidavit of Donald L. Dinsmore in support of her Response to Household Life Insurance Company's Motion for Summary Judgment. The Receiver's belated submission of Dinsmore's written report runs afoul of the expert disclosure requirements set forth in Federal Rule of Civil Procedure 26 and Local Rule 26.2(C). Accordingly, Dinsmore's Affidavit, and all references thereto, are due to be stricken from the record. *See, e.g., Reese v. Herbert*, 527 F.3d 1253 (11th Cir. 2008) (upholding Northern District of Georgia's decision striking expert affidavit submitted for the first time two months after the close of discovery and in response to motion for summary judgment).<sup>1</sup>

For the reasons set forth above and in the Insurers' Memorandum of Law, the Insurers respectfully request that the Court grant their Motion to Strike the Affidavit of Donald L. Dinsmore and any references thereto contained in the Receiver's responses to the Insurers' Motions for Summary Judgment.

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<sup>1</sup> While the Receiver did not submit the Affidavit of Donald L. Dinsmore with her Response to Protective Life Insurance Company's Motion for Summary Judgment, Dinsmore's Affidavit specifically addresses Protective and contains Dinsmore's opinions as to the Protective policy at issue. Moreover, the Receiver refers to Dinsmore in Footnote 9 of her Response to Protective's Motion for Summary Judgment. (*See* ECF Doc. No. 261, at p. 13). Thus, the Receiver's submission of Dinsmore's Affidavit and testimony is untimely and improper as to both of the Insurers.

Dated: March 3, 2015.

Respectfully submitted,

*/s/ Alexander B. Feinberg*

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**LOCAL RULE 7.1(D) CERTIFICATION**

By signature below, counsel certifies that the foregoing document was prepared in Times New Roman, 14 point font in compliance with Local Rule 5.1B.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of March, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such following to counsel of record. In the event that the CM/ECF system does not send notification of such filing any counsel of record, undersigned counsel will serve the following them via U.S. Mail.

/s/ Alexander B. Feinberg  
Of Counsel